

CV 02-2398 #1

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AT SEATTLE  
CLERK U S DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPT

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DAVID F. POTTER,

Plaintiff,

v

KING COUNTY,

and

JOHN DOE, in his  
capacity as a police officer for  
King County, and as an individual,

Defendants.

CV02 2398 Z

COMPLAINT FOR DAMAGES

INTRODUCTION

1 This is a civil action seeking damages against the above-named defendants

The civil claims include a common law tort cause of action, statutory causes of action, and

COMPLAINT FOR DAMAGES - 1

**MUENSTER & KOENIG**  
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308626 Sliss

1 offenses committed under color of law resulting in a deprivation of rights secured by the  
2  
3 Constitution and laws of the United States of America

4  
5 JURISDICTION AND VENUE

6  
7 2 This Court has personal and subject matter jurisdiction over plaintiff's  
8 federal civil rights claims under Title 42, United States Code, § 1983, and Title 28, United  
9 States Code, §§ 1331 and 1343(a)(3).

10 3 This Court has pendent jurisdiction over plaintiff's state law claim and over  
11 defendants as to said claim, pursuant to Title 28, United States Code, § 1367 (Judicial  
12 Improvements Act of 1990), Public Law No 101-650, 104 Stat 5089 (1990)

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14 4 The acts and omissions complained of herein occurred in King County,  
15 Washington, and the defendants are residents and citizens of the state of Washington.

16 5. Plaintiff is a resident and citizen of the state of Oregon

17 6 The matter in controversy exceeds the sum of \$75,000, exclusive of  
18 interests and costs

19  
20 7 This Court has diversity jurisdiction over plaintiff's claims pursuant to Title  
21 28, United States Code, Section 1332

22 8 Venue in this Court is proper pursuant to Title 28, United States Code, §  
23 1391

1

2 PARTIES

3

4 9 Plaintiff David F Potter is a citizen of the United States and a citizen and

5 resident of the state of Oregon Defendant King County is a county organized under the

6 laws of the State of Washington. Defendant King County is sued directly under Title 42,

7 United States Code, § 1983 as to the federal causes of action, and under the doctrine of

8 *respondeat superior* as to the state law cause of action

9

10 10 At all times material to this complaint, defendant John Doe was a police

11 officer employed by defendant King County At all times material to this complaint,

12 defendant John Doe was an agent and employee of defendant King County, and was acting

13 within the scope of his employment with King County, under color of the laws of the State

14 of Washington

15

16 11 Defendant John Doe is sued in his individual capacity and in his official

17 capacity as an agent and employee of King County

18

19 FACTUAL ALLEGATIONS

20

21 12 During the week of November 29-December 3, 1999, the World Trade

22 Organization (WTO) held meetings in downtown Seattle

23

24 13 Thousands of people gathered in the streets of Seattle to peacefully protest

25 the policies of the WTO, contending that such policies are in conflict with American laws

26 protecting the environment, labor, and human rights

1  
2           14     During the WTO week, police tear-gassed, pepper-sprayed and/or arrested  
3 numerous peaceful protestors, innocent bystanders, and members of the media

4           15     On November 30, 1999, defendant King County sent officers of the King  
5 County Sheriff's Office to the downtown area of Seattle. The officers patrolled the streets,  
6 dressed in riot gear

7           16     Defendant King County provided its police officers with what is believed  
8 to be pepper spray to use against citizens in the downtown Seattle area

9           17     Pepper spray is a dangerous chemical weapon

10          18     At approximately 5.30 p.m. in the afternoon on November 30, 1999,  
11 plaintiff David Potter was standing on the sidewalk near the Independent Media Center  
12 located at 1415 Third Avenue in Seattle.

13          19     Plaintiff was on the scene as a video photographer. He displayed a press  
14 pass on a cord around his neck, chest-high

15          20     Plaintiff carried his video camera and filmed police and civilians in the area

16          21     Without warning, defendant John Doe fired chemical spray, believed to be  
17 pepper spray, at plaintiff as he photographed

18          22     Plaintiff's face, ears and eyes were drenched in the chemical spray  
19 Plaintiff experienced immediate, intense pain, fear and temporary blindness

20          23     Neither defendant John Doe nor any of the other police officers present  
21 provided or attempted to provide any first aid to plaintiff

22          24     Defendant King County failed to properly supervise defendant John Doe

1  
2           25     Defendant King County failed to train defendant John Doe not to fire  
3 chemical weapons at press photographers

4           26     Defendant King County failed to provide its officers deployed on November  
5 30, 1999 with adequate food, water and opportunities for rest

6           27     As a result of the acts and omissions of defendants, plaintiff suffered  
7 personal injuries including, but not limited to, bodily injury, pain and suffering, emotional  
8 distress, and other consequential damages  
9

10  
11                   FIRST CAUSE OF ACTION  
12                   VIOLATION OF THE FIRST AMENDMENT

13           28     Plaintiff hereby incorporates and realleges as if fully set forth herein each  
14 and every allegation of paragraphs 1 through 27

15           29     The acts and omissions of defendants herein were done under color of state  
16 law, custom or usage  
17

18           30     Plaintiff David Potter had a federally-protected right, under the freedom of  
19 speech, press and assembly provisions of the First Amendment to the United States  
20 Constitution, to be present in the downtown area of Seattle and to film the contacts  
21 between police officers and citizens during the WTO-related protests and gatherings  
22

23           31     The acts and omissions of defendants herein proximately caused the  
24 deprivation of the First Amendment rights of plaintiff  
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1  
2 32 As a proximate result of the acts and omissions of defendants and  
3 deprivation of plaintiff's First Amendment rights, plaintiff suffered personal injuries as set  
4 forth hereinabove.

5  
6 SECOND CAUSE OF ACTION  
7 VIOLATION OF THE FOURTH AMENDMENT PROHIBITION  
8 AGAINST UNREASONABLE SEIZURES

9 33 Plaintiff hereby incorporates and realleges as if fully set forth herein each  
10 and every allegation of paragraphs 1 through 32.

11 34 The acts and omissions of defendants herein were done under color of state  
12 law, custom or usage

13 35 David Potter was seized, for purposes of the Fourth Amendment to the  
14 United States Constitution, by the acts and omissions of defendants set forth herein

15 36 David Potter had a federally-protected right, under the Fourth Amendment,  
16 not to be subjected to an unreasonable seizure

17 37 The acts and omissions of defendants herein proximately caused the  
18 deprivation of the Fourth Amendment rights of David Potter.

19 38 As a proximate result of the acts and omissions of defendants and  
20 deprivation of plaintiff's Fourth Amendment rights, plaintiff suffered personal injuries as  
21 set forth hereinabove

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THIRD CAUSE OF ACTION  
VIOLATION OF FOURTH AMENDMENT  
PROHIBITION AGAINST THE USE OF UNREASONABLE FORCE

39 Plaintiff hereby incorporates and realleges as if fully set forth herein each and every allegation of paragraphs 1 through 38

40 The acts and omissions of defendants herein were done under color of state law, custom or usage

41 David Potter was seized, for purposes of the Fourth Amendment to the United States Constitution, by the acts and omissions of defendants set forth herein

42 David Potter had a federally-protected right, under the Fourth Amendment, not to be subjected to the use of unreasonable force against his person

43 As a proximate result of the acts and omissions of defendants and the deprivation of plaintiff's Fourth Amendment rights, plaintiff suffered personal injuries as set forth hereinabove

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FOURTH CAUSE OF ACTION  
VIOLATION OF THE FOURTEENTH  
AMENDMENT DUE PROCESS CLAUSE

44 Plaintiff hereby incorporates and realleges as if fully set forth herein each and every allegation of paragraphs 1 through 43

45 The acts and omissions of defendants herein were performed under color of state law, custom or usage

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2 46. David Potter had federally-protected rights, under the Due Process Clause  
3 of the Fourteenth Amendment to the United States Constitution, to remain in a public place  
4 of his choice and the right to move from one place to another, in order to observe and film  
5 the actions of the police and the citizens in downtown Seattle

6 47 The acts and omissions of defendants herein proximately caused the  
7 deprivation of plaintiff's Fourteenth Amendment rights  
8

9 48 As a proximate result of the acts and omissions of defendants, plaintiff  
10 suffered personal injuries as set forth hereinabove  
11

12 FIFTH CAUSE OF ACTION  
13 MUNICIPAL LIABILITY OF KING COUNTY

14 49 Plaintiff hereby incorporates and realleges as if fully set forth herein each  
15 and every allegation of paragraphs 1 through 48  
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17 50 At all times material herein, defendant King County had a duty, under the  
18 United States Constitution, to properly supervise its police officers

19 51 At all times material herein, defendant King County had a duty, under the  
20 Fourth Amendment to the United States Constitution, to train defendant John Doe not to  
21 attack photographers displaying press credentials with chemical weapons, including pepper  
22 spray  
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24 52 Defendant King County failed to properly supervise defendant John Doe

25 53 Defendant King County failed to properly train defendant John Doe  
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2           54     The above-described failures to supervise and to train were maintained with  
3 deliberate, reckless and/or callous indifference to the constitutional rights of the plaintiff  
4 as set forth hereinabove

5           55     The above-described failures by defendant King County to properly  
6 supervise and to properly train defendant John Doe proximately caused the deprivation of  
7 the constitutional rights of the plaintiff as set forth hereinabove  
8

9           56     As a proximate result of the failure of defendant King County to properly  
10 supervise and train, and as a result of the deprivation of plaintiff's constitutional rights,  
11 plaintiff suffered personal injuries as set forth hereinabove  
12

13                               SIXTH CAUSE OF ACTION  
14                               NEGLIGENCE

15           57     Plaintiff hereby incorporates and realleges as if fully set forth herein each  
16 and every allegation of paragraphs 1 through 56  
17

18           58     Defendants had a general affirmative duty toward the public, and had a  
19 special affirmative duty toward the plaintiffs to refrain from causing injury to plaintiff  
20 David Potter, in accordance with the applicable standard of care required of police and  
21 other law enforcement officers  
22

23           59     The acts and/or omissions of defendants, and each of them, were a breach  
24 of the duty of care defendants, and each of them, owed to the plaintiff David Potter

25           60     Defendant King County is liable for the actions of defendant John Doe  
26 under the doctrine of *respondent superior*  
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28 COMPLAINT FOR DAMAGES - 9

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1  
2 61 As a direct, proximate and foreseeable result of the wrongful actions  
3 described hereinabove, plaintiff has been damaged in an amount in excess of the minimum  
4 jurisdiction of this Court  
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6  
7 PRAYER FOR RELIEF

8 WHEREFORE, plaintiff prays for relief as follows

9 Compensatory Damages The defendants should be required to pay compensatory  
10 damages in an amount to be proven at trial  
11

12 Attorneys' Fees The defendants should be required to pay the plaintiff's reasonable  
13 attorneys' fees and costs pursuant to Title 42, United States Code, § 1988

14 Other Relief The Court should grant the plaintiff such other and further relief as  
15 the Court deems just and equitable  
16

17 DATED this the 27th day of November, 2002

18 Respectfully submitted,

19 MUENSTER & KOENIG

20  
21 By.   
22

JOHN R. MUENSTER

WSBA No 6237

Attorney at Law

24 Of Attorneys for Plaintiff David F Potter  
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